

DÉLİNĘ TAX TREATMENT AGREEMENT

DÉLJNEĀ TAX TREATMENT AGREEMENT

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Finance

("Canada")

AND:

THE GOVERNMENT OF THE NORTHWEST TERRITORIES, as represented by the Minister of Finance

("GNWT")

AND:

THE DÉLJNEĀ FIRST NATION BAND, as represented by the Chief of the DéljnéĀ First Nation Band and

THE DÉLJNEĀ LAND CORPORATION, as represented by the President of the DéljnéĀ Land Corporation

("DéljnéĀ First Nation").

WHEREAS:

1. Section 22.3.1 of the FSGA provides that the parties will enter into a tax treatment agreement; and
2. This agreement is the tax treatment agreement referred to in recital 1 and shall be called the "DéljnéĀ Tax Treatment Agreement".

NOW THEREFORE, the parties agree as follows:

DÉLJNĚ TAX TREATMENT AGREEMENT

1 INTERPRETATION

1.1 In this agreement:

"claimant" means:

- (a) the DGG; or
- (b) a person, other than a financial institution, that is:
 - (i) a trust, board, commission, tribunal or similar body, established by the DGG;
 - (ii) an eligible corporation incorporated under federal law or NWT law; or
 - (iii) a partnership each member of which is a person described in (a) or (i) or (ii);

"*Cultural Property Export and Import Act*" means the *Cultural Property Export and Import Act*, R.S.C. 1985, c. C-51;

"eligible corporation" means:

- (a) a corporation, all of the shares of which, except director's qualifying shares, or of the capital of which, are owned by the DGG;
- (b) a corporation, all of the shares of which, except director's qualifying shares, or of the capital of which, are owned by a corporation that itself is an eligible corporation; or
- (c) a corporation all of the shares of which, except director's qualifying shares, or of the capital of which, are owned by any combination of the persons referred to in (a) and (b);

"*Excise Tax Act*" means the *Excise Tax Act*, R.S.C. 1985, c. E-15;

"FSGA" means the Déljné Final Self-Government Agreement between and signed by Canada, the GNWT, the Déljné First Nation Band and the Déljné Land Corporation, as amended from time to time;

"*Income Tax Act*" means the *Income Tax Act*, R.S.C. 1985 c.1 (5th supp);

"*Interpretation Act*" means the *Interpretation Act*, R.S.C. 1985, c. I-21;

"parties" means:

(a) prior to the effective date:

- (i) the Délı̄në First Nation Band and the Délı̄në Land Corporation;
- (ii) the GNWT; and
- (iii) Canada; and

(b) as of the effective date:

- (iv) the DGG;
- (v) the GNWT; and
- (vi) Canada;

"permanent establishment" of a claimant means:

(a) a fixed place of business of the claimant and includes:

- (i) a place of management, a branch, an office, a factory, a workshop or other site, and
- (ii) a mine, an oil or gas well, a quarry, timberland or any other place of extraction of natural resources;

(b) a fixed place of business of another person (other than a broker, general commission agent or other independent agent acting in the ordinary course of business or any person established by the claimant) who is acting on behalf of the claimant;

(c) a place at which the claimant uses substantial machinery or equipment; or

(d) any real property owned, or supplied on a regular or continuous basis, by the claimant.

"specified activity" of a claimant means:

(a) a business or other activity that has the primary purpose of providing property or services to other claimants, DFN Citizens, or individuals resident on Délı̄në Lands or any combination of those persons; or

(b) any other business or activity that Canada and DGG agree is a specified activity.

- 1.2 The *Interpretation Act* applies to this agreement as if it were an enactment, except that the definition of “government” in subsection 123(1) of the *Excise Tax Act* does not apply for the purposes of part 4 of this agreement.
- 1.3 Except as provided in sections 1.1 and 1.4, the definitions of the FSGA, other than the words “authority” and “director”, apply to this agreement.
- 1.4 The definition of “person” in the FSGA does not apply in the definition of “permanent establishment”.

2 GENERAL

- 2.1 This agreement does not form part of the FSGA.
- 2.2 This agreement does not recognize or affirm any aboriginal or treaty rights and is not a treaty or a land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982*.
- 2.3 This agreement will enure to the benefit of and be binding upon the parties.
- 2.4 Nothing in this agreement affects any entitlement of DFN Citizens or the DGG to any benefit available under any legislation.
- 2.5 No term or condition of this agreement, or performance by a party of a covenant under this agreement, will be deemed to have been waived unless the waiver is in writing and signed by the party or parties giving the waiver.
- 2.6 No written waiver of a term or condition of this agreement, of performance by a party of a covenant under this agreement, or of default by a party of a covenant under this agreement, will be deemed to be a waiver of any other covenant, term or condition, or of any subsequent default.
- 2.7 This agreement may not be assigned, either in whole or in part, by any party.
- 2.8 This agreement may be executed at one or more times and in one or more places. Each counterpart will be deemed an original instrument as against any party who has signed it, and the aggregate of the counterparts will be deemed to constitute a single executed document.
- 2.9 If any provision of this agreement is found or declared by a court of last resort to be void, voidable, invalid, illegal, or unenforceable for whatever reason, the provision

shall be severed from the remainder of the agreement but all other provisions of the agreement shall remain in full force and effect and shall be construed as if this agreement had been executed without the invalid, illegal or unenforceable portion.

3 INCOME TAX STATUS OF THE DGG

- 3.1 For the purpose of paragraph 149(1)(c) of the *Income Tax Act*, the DGG is deemed to be a public body performing a function of government in Canada.
- 3.2 For the purposes of paragraphs 149(1)(d.3) to 149(1)(d.6) and subsections 149(1.1) to 149(1.3) and 149(11) of the *Income Tax Act*, the DGG is deemed to be a public body performing a function of government in Canada whose geographical boundaries are those of Délı̄në Lands.
- 3.3 For the purposes of subsections 110.1(1), 118.1(1) and 149.1(1) of the *Income Tax Act*, the DGG is deemed to be a public body performing a function of government in Canada.
- 3.4 The DGG will be treated as a public authority designated pursuant to subsection 32(2) of the *Cultural Property Export and Import Act* and any non-profit organization established by the DGG to receive, store and display cultural objects will be treated as an institution designated under that subsection of that Act, if the DGG or the non-profit organization, as the case may be:
- (a) has:
 - (i) a facility that meets the environmental requirements of the Minister of Canadian Heritage in respect of long-term storage and display of cultural artifacts; or
 - (ii) the use, by virtue of an agreement with a public authority or an institution, as the case may be, that is designated under subsection 32(2) of the *Cultural Property Export and Import Act*, of a facility that meets the environmental requirements of the Minister of Canadian Heritage, until such time as the DGG or the non-profit organization has a facility that meets those requirements; and
 - (b) uses the facility to store or display cultural objects, including any that are donated to it and that are included in “total cultural gifts” within the meaning of subsection 118.1(1) of the *Income Tax Act* for purposes of computing the income tax liability of the donor.

4 GST REFUND

4.1 A claimant who acquires or imports property or a service in respect of which it pays tax under subsection 165(1) or section 212 or 218 of the *Excise Tax Act* is entitled to a refund of that portion of the tax that is not recoverable as an input tax credit under Part IX of that Act and is not otherwise recovered under any law, if

- (a) the property or service was not acquired or imported for consumption, use or supply in the course of a business or other activity, other than a specified activity, engaged in by the claimant for profit or gain;
- (b) the property or service was acquired or imported for consumption, use or supply in the course of performing a function of government under the FSGA or a subsequent agreement between Canada and the GNWT, together or separately, and the DGG; and
- (c) the property or service:
 - (i) is a capital property of the claimant acquired or imported for consumption, use or supply, at any place, primarily in the course of engaging, on Délıne Lands, in a business or any other activity of the claimant;
 - (ii) is a service in respect of capital property referred to in (i) or is property supplied in conjunction with a service in respect of capital property referred to in (i);
 - (iii) in the case of property or a service referred to in neither (i) nor (ii), was acquired or imported for consumption, use or supply, at any place, exclusively in the course of engaging, on Délıne Lands, in a business or any other activity of the claimant; or
 - (iv) is land that has been added to Settlement Lands pursuant to Chapter 24 of the SDMCLCA.

4.2 For the purposes of 4.1(c), where a claimant is engaging in a business or any other activity partly on Délıne Lands and partly at or through one or more permanent establishments of the claimant that are not located on Délıne Lands, the claimant is deemed not to be engaging, on Délıne Lands, in the business or activity:

- (a) in the case of a business or activity that involved the making of supplies of real property on a regular or continuous basis by way of lease, licence or similar arrangement, if the property is not, and is not intended to be, located on Délıne Lands; and

(b) in any other case, to the extent to which the claimant is engaging in the business or activity at or through one or more permanent establishments of the claimant that are not located on Déljñę Lands.

- 4.3 Despite paragraph 141.1(1)(b), subsection 200(3), section 1 of Part V.1 of Schedule V and sections 2 and 25 of Part VI of that Schedule, of the *Excise Tax Act*, and section 2.4 of this agreement, if a claimant makes a supply by way of sale of property that is capital property of the claimant and in respect of which the claimant was entitled to receive a refund under section 4.1, the supply is deemed, for the purposes of Part IX of that *Excise Tax Act*, to be made in the course of a commercial activity of the claimant.
- 4.4 A refund of tax under section 4.1 will not be paid unless an application for the refund is filed with the Minister of National Revenue within four years after the tax was paid.
- 4.5 The provisions of Part IX of the *Excise Tax Act* apply, with such modifications as the circumstances require, in respect of claims under section 4.1 and in respect of amounts paid or payable as a refund under that section, as though the refund provided for under that section were a rebate provided for under Division VI of Part IX of the *Excise Tax Act*.

5 DISPUTE RESOLUTION

- 5.1 The parties desire and expect that most disagreements will be resolved by informal discussion, between or among the parties, without the necessity of invoking a dispute resolution mechanism.
- 5.2 Except for a dispute under parts 3 and 4, in the event of a dispute between any of the parties arising under this agreement, the parties involved in the dispute will use the mediation process set out in part 27.5 of the FSGA before pursuing any other legal remedy.

6 TERM OF THIS AGREEMENT

- 6.1 This agreement comes into effect on the Effective Date and, unless the parties agree otherwise, terminates on March 31st of the second calendar year following the year in which a party notifies the others that it wants the agreement to terminate.
- 6.2 A party may not give notice that it wants this agreement to terminate before the fiscal year in which the 15th anniversary of the effective date occurs.
- 6.3 At least one year before this agreement is expected to terminate, the parties shall use best efforts to negotiate a new tax treatment agreement.

7 AMENDMENT AND REVIEW

- 7.1 Any amendment to this agreement must be in writing and executed by all parties.
- 7.2 Any party may at any time request the other parties to review this agreement and to consider amendments to this agreement and the other parties will not unreasonably withhold consent to the review.
- 7.3 For greater certainty, nothing in section 7.2 requires any party to agree to amend this agreement.

8 NOTICES

- 8.1 Unless otherwise provided, a notice, document, request, approval, authorization, consent or other communication (each a “communication”) required or permitted to be given or made under this agreement must be in writing and may be given or made in one or more of the following ways:
- (a) delivered personally or by courier;
 - (b) transmitted by facsimile transmission; or
 - (c) mailed by prepaid registered post in Canada.
- 8.2 A communication will be considered to have been received:
- (a) if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
 - (b) if sent by facsimile transmission and if the sender receives confirmation of the transmission, at the start of business on the next business day after the business day on which it was transmitted; or
 - (c) if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.
- 8.3 A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

For Canada:

Attention: Minister of Finance
House of Commons
Confederation Building
OTTAWA ON K1A 0A6
Fax number: (613) 995-1534

For Northwest Territories:

Attention: Minister of Finance
Government of the Northwest Territories
Legislative Assembly
YELLOWKNIFE NT X1A 2L9
Fax number: (867) 873-0596

For D l n  Got' n  Government:

Attention:  ekw'aht d 
D L N  NT X0E 0J0
Fax number: (867) 589-8101

- 8.4 A party may change its address or facsimile number by giving a notice of the change to the other Parties in the manner set out above in 8.1.

**For the Délı̄ne First
Nation Band and Délı̄ne
Land Corporation**

**For the
Government of Canada**

**For the
Government of the
Northwest Territories**

Signed at _____,
Northwest Territories,
this ___ day of
_____, 201__.

Signed at _____,
Ontario,
this ___ day of
_____, 201__.

Signed at _____,
Northwest Territories,
this ___ day of
_____, 201__.

Chief of Délı̄ne First
Nation Band

The Hon.
Minister of Finance

The Hon.
Minister of Finance

Witness

Witness

Witness

President of Délı̄ne Land
Corporation

Witness